

AG Contract No. KR03-0156TRN  
ADOT ECS File No JPA 02-211  
Project: STP-326-(012)P  
TRACS: #260 YV 208 H3868 03C  
Section: SR 260 – Cottonwood to  
Camp Verde Segment 2  
(MP 218 4 to MP 222 0)  
5-Year Program No.: 14202

## AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE NATURE CONSERVANCY  
ARIZONA CHAPTER

THIS AGREEMENT is entered into 12 August, 2003, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and THE NATURE CONSERVANCY, acting by and through its Arizona Chapter, ("The Nature Conservancy")

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-408 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The Nature Conservancy is empowered by its Board of Governors to enter into this agreement, and has resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Nature Conservancy

3. Incident to a roadway improvement project on SR-260 between milepost (MP) 218/4 (+/-) and MP 222.0 (+/-) featuring the widening and realignment of SR 260 contemplated by the State, a portion of the work will impact lands owned, controlled or under the jurisdiction of the US Army Corps of Engineers (USACE). The USACE requires mitigation of the project area lands by replacing habitat related to the conservation efforts for the Southwest Willow Flycatcher. The mitigation will be for the loss of waters of the United States associated with the roadway and drainage activities for the SR 260, Cottonwood to Camp Verde Segment 2 project. To meet that requirement, the State and The Nature Conservancy desire to participate in the acquisition, enhancement, management and maintenance of land suitable for the habitat replacement at a cost of \$20,000.00, all at State expense.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. 26224  
Filed with the Secretary of State  
Date Filed: 08/12/03

Janice K. Brewer  
Secretary of State

By: Vicky D. Beauregard

## **II. SCOPE OF WORK**

### **1 The Nature Conservancy will:**

a. Upon execution of this agreement, invoice the State for the cost of the mitigation effort, an in-lieu fee of \$20,000 00.

b. Dedicate this in-lieu fee payment for land acquisition, or habitat preservation or enhancement purposes, replacing habitat related to the conservation efforts for the Southwest Willow Flycatcher.

### **2 The State will:**

a. Within thirty days after receipt and approval of an invoice, pay The Nature Conservancy the in-lieu fee of \$20,000 00 as the total cost of the mitigation effort

b. Upon completion of the payment process, through its Environmental & Enhancement Group, provide a copy of the invoice and payment voucher to the USACE (Permit #2002-01391-CJL) to document the successful transfer of in-lieu mitigation fees.

## **III. MISCELLANEOUS PROVISIONS**

1 This agreement shall remain in force and effect until completion of said payments, provided; however, that this agreement may be cancelled at any time prior to the commencement of performance under this agreement, upon thirty (30) days written notice to the other party.

2 This agreement shall become effective upon signature and date by the parties hereto

3 This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511 as regards conflicts of interest on behalf of state employees.

4. The provisions of Arizona Revised Statutes Section 35-214 pertaining to audit are applicable to this contract.

5 In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth in Arizona Revised Statutes Section 12-1518

6 This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination"

7. Non-Availability of Funds: Every payment obligation of State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, Mail Drop 616E  
Phoenix, AZ 85007  
FAX: 602-712-7424

The Nature Conservancy, Arizona Chapter  
Director of Conservation  
1510 E. Ft. Lowell  
Tucson, AZ 85719  
FAX: 520-620-1799

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IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written

**THE NATURE CONSERVANCY  
ARIZONA CHAPTER**

By Thomas P. Collazo  
THOMAS P. COLLAZO  
Director of Conservation

June 17, 2003  
DATE

**STATE OF ARIZONA  
Department of Transportation**

By Susan Tellez  
SUSAN TELLEZ  
Contract Administrator

6-23-03  
DATE

G:02-211-DIST T-Nature Conservancy  
02June03-lg-revised  
03Jun03-jw assigned  
09Jun2003-lg

APPROVAL OF THE NATURE CONSERVANCY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION and the NATURE CONSERVANCY and declare this agreement to be in proper form and within the powers and authority granted to the NATURE CONSERVANCY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 2nd day of July, 2003.

Andrew S. Hernandez

Attorney



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

TERRY GODDARD  
ATTORNEY GENERAL

CIVIL DIVISION  
TRANSPORTATION SECTION  
WRITER'S DIRECT LINE 602.542.8855

**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR03-0156TRN (JPA 02-211), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED August 4, 2003.

TERRY GODDARD  
Attorney General

A handwritten signature in cursive script, reading "Susan E. Davis".

SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

/ss

att.